

## **SETTLEMENT AND RELEASE AGREEMENT**

This SETTLEMENT AND RELEASE AGREEMENT (the "Agreement") is made and entered into this 31st day of December, 2015, by and between Festiva Development Group, Inc. ("FDG") and North Carolina Attorney General Roy Cooper pursuant to his powers under Chapter 75 of the North Carolina General Statutes ("Attorney General") (the aforesaid persons and entities shall collectively be referred to as the "Parties").

### **STATEMENT OF PURPOSE**

WHEREAS, FDG is a corporation organized and existing under the laws of the State of Nevada, but which has a principal place of business in Florida. FDG is engaged in the business of selling memberships in a vacation and travel club known as the Festiva Adventure Club ("Club") and acquiring timeshare resort inventory for use by members of the Club;

WHEREAS, the Consumer Protection Division ("CPD") of the Attorney General's Office has been investigating complaints concerning certain aspects of the Club, including, but not limited to:

- (a) the manner in which FDG marketed and sold Club memberships;
- (b) FDG's cancellation policies;
- (c) the availability of units for use by Club members; and
- (d) FDG's reservation system for Club members (paragraphs (a) through (d) shall be referred to as "Covered Conduct").

WHEREAS, FDG has met with the CPD on several occasions in order to provide information and documentation responsive to the CPD's requests and in an effort to reach a resolution regarding the outstanding complaints; and

WHEREAS, in order to resolve outstanding consumer complaints from Club members who are North Carolina residents or who purchased Club memberships in North Carolina, and to conclude the CPD's investigation, the Parties have agreed to resolve their differences in accordance with the terms set forth below;

### **AGREEMENT**

NOW, THEREFORE, in consideration of the mutual promises contained herein, the Parties hereby agree as follows:

1. FDG represents that prior to the date of this Agreement, and for reasons unrelated to the investigation into the Covered Conduct, it ceased sales presentations and closings for the Club in North Carolina. FDG agrees that for a period of three years from December 31, 2015 it will not conduct in North Carolina sales presentations and closings for the Club, which prohibition shall include sales presentations commonly known as "in-house" or "frontline" sales,

dinner party and other events where additional points are sold to existing members, and Club trial memberships such as Voyages and Passport. During this three-year time, FDG also agrees that it shall not conduct any face-to-face or in-person marketing of the Club in North Carolina (All of the aforesaid activities shall be referred to as "Restricted Activities"). At the end of this three-year period, if FDG desires to engage in any of the Restricted Activities in North Carolina, FDG shall give written notice to the CPD at least thirty (30) days prior to engaging in such activities in North Carolina. With regard to any other marketing that FDG may do in North Carolina, FDG agrees that it shall refrain from engaging in the following conduct:

- a. Soliciting consumers to visit Club affiliated resorts by misrepresenting the nature or purpose of the solicitation. To the extent a goal of any solicitation is, in whole or in part, to have a consumer attend a sales presentation for the Club or other FDG product, FDG agrees to prominently disclose to the consumer that one purpose of the meeting is a sales presentation concerning Club memberships or upgrades or other FDG products.
- b. Soliciting consumers to attend sales presentations for the Club by using fictitious names that imply or give the impression the solicitation is from a government agency or trade association, including, but not limited to, the Myrtle Beach Visitors' Information Bureau.
- c. Informing consumers that they have won prizes or contests, including any language that has a tendency to lead the consumer to believe he or she has won a contest or anything of value, including but not limited to "congratulations," "you are entitled to receive," or words to that effect, unless (i) the consumer has been selected by a method in which no more than ten percent (10%) of the names considered are selected as winners of any prize, (ii) the consumer is given the prize without any obligation, and (iii) the prize is delivered to the consumer at no expense within ten (10) days of the representation of winning a prize.
- d. Informing consumers that they are eligible to win a prize or words to that effect, unless each of the following is clearly and prominently disclosed immediately adjacent to the description of the item or prize to which it relates: (i) the actual retail value of each item or prize (the price at which substantial sales of the item were made in the area within the last ninety (90) days, or if no substantial sales were made, the actual cost of the item or prize to the person on whose behalf the contest or promotion is conducted), (ii) the actual number of each item or prize to be awarded, and (iii) the odds of receiving each item or prize.
- e. Representing to consumers that they have been specially selected by using language that has a tendency to lead a consumer to believe he or she has been specially selected, including but not limited to "carefully selected," "you have been chosen," or words to that effect, unless (i) the selection process is designed to reach a particular type or particular types of consumer, (ii) the selection process uses a source other than telephone directories, city directories, tax listings, voter registration records,

purchased mailing lists, or similar common sources of names, and (iii) no more than ten percent (10%) of those considered are selected.

- f. Violating any applicable provision of the Telemarketing Sales Rule at 16 CFR, Part 310 (TSR), including, but not limited to, the following, unless otherwise exempted:
  - (i) Misrepresenting, directly or by implication, any material fact, including but not limited to, the total costs to purchase, receive, or use, and the quantity of, the good or service, in violation of 16 CFR § 310.3(a)(2)(i);
  - (ii) Misrepresenting, directly or by implication, any material aspect of a prize promotion including, but not limited to, the odds of being able to receive a prize, the nature and value of a prize, or that a purchase or payment is required to win a prize or to participate in a prize promotion, in violation of 16 CFR §§ 310.3(a)(1)(iv), and 310.4(d)(iv);
  - (iii) Failing in any outbound telephone call to disclose truthfully, promptly, and in a clear and conspicuous manner (i) the identity of the seller; (ii) the nature of the goods or services; and (iii) that the purpose of the call is to sell goods and services, in violation of 16 CFR § 310.4(d).
- g. Making false or deceptive statements to consumers, including but not limited to false or deceptive statements regarding availability or savings.

2. Within ten (10) days from the execution of this Agreement, FDG shall pay to the Attorney General \$145,000 for attorneys' fees, reimbursement of other costs or investigation or litigation, consumer restitution, and for consumer protection purposes and other uses permitted by law, at the discretion of the North Carolina Attorney General.

3. In addition to the restitution described in Paragraph 2, FDG, in order to resolve outstanding consumer complaints on file with the Consumer Protection Division, shall pay an amount not exceeding \$141,144.32, which shall be distributed in the following manner:

- (a) The restitution described in this paragraph 3 is for consumers with outstanding consumer complaints filed with the Attorney General who either purchased their Club memberships in North Carolina or who are Club members living in North Carolina;
- (b) Such consumers who never used the membership will receive full restitution of all amounts paid toward their purchase price for the Club membership, release for any outstanding payments due FDG, and cancellation of their contracts;
- (c) Such consumers who used it one time will receive restitution of 75% of all amounts paid toward their purchase price for the Club membership, release for any outstanding payments due FDG, and cancellation of their contracts;

(d) Such consumers who used it twice will receive restitution of 50% of all amounts paid toward their purchase price for the Club membership, release for any outstanding payments due FDG, and cancellation of their contracts; and

(e) Such consumers who used it three or more times will be entitled to a release for any outstanding payments to FDG and cancellation of their contracts.

In no event shall FDG's liability under this section exceed the total amount of \$141,144.32.

The CPD will send out letters, claim forms, and releases to the consumers who meet the criteria set forth in subsection (a), who will be offered the opportunity to request restitution and cancellation of their contracts consistent with the provisions set out above. The letters and claim forms will be substantially similar to the letter and claim form attached to this Settlement Agreement as Exhibit A. The release will be in the form attached to this Settlement Agreement as Exhibit B. Consumers who choose to participate in the restitution and cancellation process must execute the claim form and release within forty-five (45) days of receipt. Upon receipt of the claim forms and release, the CPD will notify FDG of the claim, and FDG, within thirty (30) days of the receipt of this notification, will send the CPD a calculation of the amount owed to each consumer with supporting documentation of usage and will remit the appropriate amount of restitution to the CPD to send to the consumers. FDG will also send the CPD a letter for each consumer notifying the consumer that his or her FDG membership is cancelled and that no further payment is required on the contract. For each consumer who chooses not to be included in this settlement or who does not timely respond to the letter from CPD containing the claim form and release, the Attorney General will close his or her complaint.

4. In the event the CPD receives complaints from Club members within sixty (60) days of the date this Agreement is executed by all Parties, if the Club members are North Carolina consumers or purchased their memberships in North Carolina, and the complaints concern Covered Conduct that occurred prior to the date of the Agreement, these Club members shall be entitled to relief using the same terms for calculating the relief as set out in Paragraph 3 above. Upon receipt of these additional complaints, the CPD will send out the letters, claim forms, and releases to these consumers that will be substantially similar to those attached to this Settlement Agreement as Exhibits A and B. Consumers who choose to participate in the restitution and cancellation process must execute the claim form and release within forty-five (45) days of receipt. Upon receipt of the claim forms and release, the CPD will notify FDG of the claim, and FDG, within thirty (30) days of the receipt of this notification, will send the CPD a calculation of the amount owed to each consumer with supporting documentation of usage and will remit the appropriate amount of restitution to the CPD to send to the consumers. FDG will also send the CPD a letter for each consumer notifying the consumer that his or her FDG membership is cancelled and that no further payment is required on the contract. For each consumer who chooses not to be included in this settlement or who does not timely respond to the letter from CPD containing the claim form and release, the Attorney General will close his or her complaint.

5. For purposes of resolving disputes with respect to compliance with this Agreement, the Attorney General may assert any claim alleging that FDG has violated this Agreement in a civil action to enforce this Agreement, or to make any claim or seek any other relief afforded by law, only after first providing FDG with written notice identifying the conduct allegedly violating this Agreement and permitting FDG fifteen (15) days to respond to the notification before the Attorney General shall commence any further proceeding. Provided, however, that the Attorney General may take any action where it concludes that, because of the specific practice, a threat to the health or safety of the public requires immediate action.

6. FDG consents to the exercise of personal jurisdiction over it by the Superior Courts of the State of North Carolina in connection with any and all actions concerning this Agreement or the breach thereof.

7. The Parties hereby acknowledge that this Agreement is a compromise of disputed claims and as such, does not constitute an admission of liability of any sort by any party. Further, this Agreement shall not be deemed as approval by the Attorney General of any of FDG's past advertising or business practices, and neither FDG nor anyone acting on its behalf shall state or imply or cause to be stated or implied that the Attorney General or any other governmental unit of the State of North Carolina has approved, sanctioned or authorized any past practice, act, advertisement or conduct of FDG.

8. FDG agrees to take such further action as the Attorney General shall reasonably request from time to time in connection herewith to evidence or give effect to the transactions contemplated hereby

9. This Agreement constitutes a full and complete settlement and release by the Attorney General of any and all claims and causes of action against FDG (including its past and present principals, officers, directors, shareholders, managers, members, representatives, employees, agents, attorneys, affiliates, parents, subsidiaries, predecessors, successors, and assigns) arising out of or connected to the Covered Conduct which were, or could have been, asserted by the Attorney General under state and federal law up to and including the date of this Agreement, and the Attorney General covenants not to commence any proceeding under the North Carolina Consumer Protection Act or other applicable law with respect to the Covered Conduct hereby released, other than enforcement of this Agreement. FDG acknowledges that the North Carolina Attorney General's Office does not personally represent individual consumers as his or her attorney and that this is only a release by the North Carolina Attorney General's Office.

10. This Agreement represents the entire agreement between the Parties named hereinabove with respect to the settlement of the dispute between the Parties, and it supersedes and terminates all prior discussions, agreements, offers, representations, and/or negotiations relating to settling the dispute. No changes shall be made to this Agreement unless in writing and signed by all Parties.

11. Any notice required herein shall be delivered by mail, sent by first-class mail, as follows:

If to FDG:

H. Catherine Claussen, Esq.  
Festiva Development Group, Inc.  
39 Patton Avenue  
Asheville, North Carolina 28801

If to the Attorney General:

Kevin Anderson, Esq.  
Senior Deputy Attorney General  
Department of Justice  
P.O. Box 629  
Raleigh, North Carolina 27602

12. All of the Parties represent that they each have the power, authority and the legal right to make, deliver, and perform the terms of this Agreement and all documents related to this Agreement.

13. This Agreement shall be governed by the laws of the State of North Carolina.

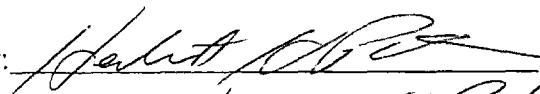
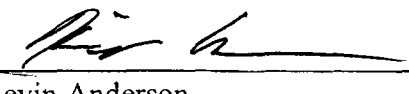
14. This Agreement shall not bind any other offices, boards, commissions or agencies of the State of North Carolina.

15. The terms, provisions, and conditions of this Agreement are binding upon the Parties, including but not limited to all principals, officers, directors, shareholders, managers, members, representatives, employees, agents, affiliates, parents, subsidiaries, successors and assigns of FDG. Causes of action based upon the breach of this Agreement shall survive the execution of this Agreement.

16. This Agreement may be executed by the Parties in any number of counterparts, each of which shall be an original document, but all of which taken together shall constitute one and the same document, notwithstanding that all Parties may not have executed all counterparts or the same counterpart.

FESTIVA DEVELOPMENT GROUP, INC.

STATE OF NORTH CAROLINA  
ex. rel. ROY COOPER  
ATTORNEY GENERAL

By:    
Printed Name: Herbert O. Vashel Kevin Anderson  
Senior Deputy Attorney General  
Its: President

**Exhibit A**  
**Letter And Claim Form For Consumers Entitled To Refund**

Consumer  
Address  
City, State, Zip

Re: Festiva Development Group, Inc.

Dear [Consumer]:

The Consumer Protection Division of the North Carolina Attorney General's office is pleased to inform you of a settlement agreement that provides you with an opportunity for a refund. Our office investigated complaints concerning some aspects of the vacation and travel club known as Festiva Adventure Club. In order to resolve the matter, our office and Festiva have reached an agreement that provides opportunities for refunds and/or releases.

The amount of your refund will depend on how many times you used the club membership. All consumers receiving refunds will receive a release for any outstanding payments owed and will have their contract with the club cancelled.

If you never used the club membership, you are eligible to receive a full refund for all amounts paid toward your purchase price. If you used the membership one time, you are eligible to receive a refund of 75% of all amounts paid toward your purchase price. If you used the membership twice, you are eligible to receive a refund of 50% of all amounts paid toward your purchase price. If you used the membership three or more times, you are eligible to receive a release for any outstanding payments and a cancellation of your contract, but not a refund.

Our records indicate that you are eligible for a refund of up to \$[xxx]. In order to receive your refund you must complete, sign and return two forms: (1) the enclosed claim form; (2) the enclosed release. Both of these documents must be returned to our office within forty-five (45) days of your receipt of this letter.

If you have any questions, you may contact the Consumer Protection Division at 919-716-6000.

Sincerely,

\_\_\_\_\_  
CONSUMER PROTECTION DIVISION

Enclosure





**Letter and Claim Form For Consumers Entitled To Release Only**

Consumer  
Address  
City, State, Zip

Re: Festiva Development Group, Inc.

Dear [Consumer]:

The Consumer Protection Division of the North Carolina Attorney General's office is pleased to inform you of a settlement agreement with Festiva Adventure Club.

Our records indicate that, pursuant to the settlement, you are eligible to receive a release from your Club membership. Obtaining the release will cancel your contract and release any outstanding payments owed under the contract. In order to receive the release you must complete, sign and return two forms: (1) the enclosed claim form; (2) the enclosed release. Both of these documents must be returned to our office within forty-five (45) days of your receipt of this letter.

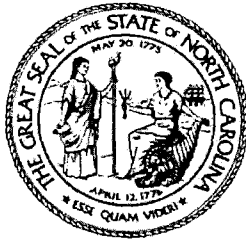
If you have any questions, you may contact the Consumer Protection Division at 919-716-6000.

Sincerely,

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CONSUMER PROTECTION DIVISION

Enclosure



**CLAIM FORM  
FOR FESTIVA DEVELOPMENT GROUP, INC. RELEASE**

PLEASE **PRINT** LEGIBLY and keep a copy for your records.

Name: \_\_\_\_\_ Social Security# \_\_\_\_\_  
Last, First, MI (full number is required to receive payment)

Mailing Address \_\_\_\_\_ Phone# ( ) \_\_\_\_\_  
\_\_\_\_\_  
e-mail address (not required) \_\_\_\_\_

I certify that I would like to accept a release from my membership in the Festiva Adventure Club.

\_\_\_\_\_  
(Signature) (Date)

**PLEASE COMPLETE THIS CLAIM FORM AND RETURN IT WITHIN 45 DAYS OF RECEIPT  
OF THE CLAIM FORM LETTER TO:**

North Carolina Department of Justice  
Consumer Protection Division  
Attn: Festiva Development Group, Inc. Restitution  
P.O. Box 629  
Raleigh, NC 27602

**Exhibit B**  
**Release Agreement For Consumers Entitled To Refund**

**RELEASE AGREEMENT**  
**FESTIVA ADVENTURE CLUB**

THIS RELEASE AGREEMENT ("Release Agreement") is entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2015, by and between NAME ("Purchaser") and Festiva Development Group, Inc., ("Festiva");

WHEREAS, Purchaser and Festiva entered into an agreement ("Purchase") whereby Purchaser agreed to purchase the following Membership Interest ("Membership Interest") in Festiva Adventure Club:

Contract Number:	XXXXXX
Non-Specific Points:	XXXXXX
Term:	40 Years
Expiration:	XXXXXX
Membership Level-Frequency:	XXXXXX
First Year Usage:	XXXXXX

WHEREAS, Purchaser is entitled to certain relief pursuant to a Settlement Agreement reached between the North Carolina Attorney General's Office and Festiva, which relief is described hereinbelow;

WHEREAS, as an express condition of the relief contained hereinbelow, it is necessary for Purchaser to execute this release of all right, title and interest in the Membership Interest, including a release of all claims that Purchaser may have against Festiva.

NOW, THEREFORE, for and in consideration of the foregoing premises, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. Payment to Purchaser and Cancellation of Club Membership. Festiva shall pay to Purchaser the sum of \$XXXX. In addition to the releases set forth below, Festiva upon its execution of this Release Agreement, shall also cancel Purchaser's membership interest in the Festiva Adventure Club. Such cancellation shall include any currently outstanding monetary obligations for the Club, including for maintenance fees, special assessments, payments toward the purchase price, and late charges.

2. Release by Festiva. Festiva, individually and on behalf of Festiva Resorts Adventure Club, hereby releases, discharges and by these presents does release, acquit, and forever discharge Purchaser, its heirs, successors, assigns, executors and representatives of and from any and all actions, causes of actions, claims, demands, damages, costs, expenses, compensation, consequential damages, and any and all obligations of any sort, known or unknown, and all consequences and results thereof, in any way growing out of, resulting from, or in any way related to the Purchase and Membership Interest, including any future obligations under the Purchase for maintenance fees and assessments. This release is not limited in scope but is a general release concerning all matters. The release and obligations described herein shall become effective upon Festiva's execution of this Release Agreement.

3. Purchaser's Release. Purchaser hereby releases, discharges and by these presents does release, acquit, and forever discharge Festiva and Festiva Adventure Club, their parents, affiliates, subsidiaries, successors, assigns, agents, employees and representatives of and from any and all actions, causes of actions, claims, demands, damages, costs, expenses, compensation, consequential damages, and any and all obligations of any sort, known or unknown, and all consequences and results thereof, in any way growing out of, resulting from, or in any way related to the Purchase and Membership Interest. This release is not limited in scope but is a general release concerning all matters, including any finance agreements or security interests made in connection with the Purchase, as well as any prior membership purchases or upgrades. The release described herein shall become effective upon Purchaser's

execution of this Release Agreement.

IN WITNESS WHEREOF, the parties have caused this Release Agreement to be duly executed and delivered effective as of the date first set forth above.

Purchaser (if the Membership Interest is held by more than one person, EACH person MUST sign):

Festiva:  
Festiva Development Group, Inc.

By: \_\_\_\_\_  
NAME

By: \_\_\_\_\_  
Its: Authorized Agent

By: \_\_\_\_\_  
NAME

## Release Agreement For Consumers Entitled To Release Only

### RELEASE AGREEMENT FESTIVA ADVENTURE CLUB

THIS RELEASE AGREEMENT ("Release Agreement") is entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2015, by and between NAME ("Purchaser") and Festiva Development Group, Inc., ("Festiva");

WHEREAS, Purchaser and Festiva entered into an agreement ("Purchase") whereby Purchaser agreed to purchase the following Membership Interest ("Membership Interest") in Festiva Adventure Club:

Contract Number:	XXXXXX
Non-Specific Points:	XXXXXX
Term:	40 Years
Expiration:	XXXXXX
Membership Level-Frequency:	XXXXXX
First Year Usage:	XXXXXX

WHEREAS, Purchaser is entitled to certain relief pursuant to a Settlement Agreement reached between the North Carolina Attorney General's Office and Festiva, which relief is described hereinbelow;

WHEREAS, as an express condition of the relief contained hereinbelow, it is necessary for Purchaser to execute this release of all right, title and interest in the Membership Interest, including a release of all claims that Purchaser may have against Festiva.

NOW, THEREFORE, for and in consideration of the foregoing premises, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. Cancellation of Club Membership. In addition to the releases set forth below, Festiva upon its execution of this Release Agreement, shall cancel Purchaser's membership interest in the Festiva Adventure Club. Such cancellation shall include any currently outstanding monetary obligations for the Club, including for maintenance fees, special assessments, payments toward the purchase price, and late charges.

2. Release by Festiva. Festiva, individually and on behalf of Festiva Resorts Adventure Club, hereby releases, discharges and by these presents does release, acquit, and forever discharge Purchaser, its heirs, successors, assigns, executors and representatives of and from any and all actions, causes of actions, claims, demands, damages, costs, expenses, compensation, consequential damages, and any and all obligations of any sort, known or unknown, and all consequences and results thereof, in any way growing out of, resulting from, or in any way related to the Purchase and Membership Interest, including any future obligations under the Purchase for maintenance fees and assessments. This release is not limited in scope but is a general release concerning all matters. The release and obligations described herein shall become effective upon Festiva's execution of this Release Agreement.

3. Purchaser's Release. Purchaser hereby releases, discharges and by these presents does release, acquit, and forever discharge Festiva and Festiva Adventure Club, their parents, affiliates, subsidiaries, successors, assigns, agents, employees and representatives of and from any and all actions, causes of actions, claims, demands, damages, costs, expenses, compensation, consequential damages, and any and all obligations of any sort, known or unknown, and all consequences and results thereof, in any way growing out of, resulting from, or in any way related to the Purchase and Membership Interest. This release is not limited in scope but is a general release concerning all matters, including any finance agreements or security interests made in connection with the Purchase, as well as any prior membership purchases or upgrades. The release described herein shall become effective upon Purchaser's execution of this Release Agreement.

IN WITNESS WHEREOF, the parties have caused this Release Agreement to be duly executed and delivered effective as of the date first set forth above.

Purchaser (if the Membership Interest is held by more than one person, EACH person MUST sign):

Festiva:  
Festiva Development Group, Inc.

By: \_\_\_\_\_  
NAME

By: \_\_\_\_\_  
Its: Authorized Agent

By: \_\_\_\_\_  
NAME